

Appl. No. 10/811,527
Docket No. 8768MD2
Amdt. dated April 16, 2008
Reply to Office Action mailed on January 16, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1, 2, 6, 9, 13, 15-16, 22-36 are pending in the present application.

Claims 3-5, 7, 8, 10-12, 14 and 17-21 are canceled without prejudice. Claim 1 has been amended to more clearly define the absorbent article in accordance with the teachings of the specification. Claim 15 has been amended to correct its dependency. In addition, new claim 36 has been added.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102 Over Odorzynski

Claims 1, 6, 9, 13, 15, and 22-27 stand rejected under 35 USC 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050). With respect to the rejected claims, the Office asserts the following:

- Odorzynski teaches diaper 10 comprising backsheet 12, topsheet 14 and absorbent core 16.
- The elastomeric hot melt adhesive is applied to at least any one of the components of diaper 10, e.g. backsheet 12.
- The adhesive is applied via slot coating and therefore forms a continuous geometric pattern of rectilinear or curvilinear stripes on the diaper component substrate with a predetermined spacing between stripes.
- Since the backsheet 12 is a nonwoven thermoplastic film and the adhesive is a hot melt adhesive, the Office asserts that the adhesive is capable of being applied to the substrate in such a manner as to be partially penetrate said substrate.
- Odorzynski teaches an elasticized area width of 1.27-7.62 mm and a thickness of 2.54 - 25.4 mm. (Col. 6, lines 52-58).

- Since Odorzynski teaches slot coating, the spacing between stripes can be predetermined so as to be nonuniform.
- Odorzynski teaches strands or ribbons of the adhesive film that are applied to define an elasticized area, therefore the strands must overlap to form boundaries and a continuous elasticized area within the boundaries. (Col.6, lines 21-27).
- Odorzynski teaches waist elastics 38, leg cuffs 36 and fastening tabs 40 manufactured from the same adhesive film composition, therefore a component of diaper 10 having the elastic composition therein has an additional elastic material that is capable of being manufactured from an alternate suitable elastomeric adhesive.
- Odorzynski teaches applying the elastic adhesive composition to at least one component of diaper 20. (Col 5. lines 49-51).
- Odorzynski teaches that backsheet 12 is comprised of a nonwoven polyethylene web. (Col. 2, lines 35-38).
- Odorzynski teaches that the component of the diaper containing the adhesive is necked. (Col 6. lines 1-7).
- Odorzynski teaches the elastic adhesive in film form sandwiched between the topsheet and backsheet to form an elasticized area. (Col. 5, lines 63-67).

Applicant respectfully traverses these rejections.

Applicants submit that Odorzynski fails to teach or suggest each and every limitation of the invention recited in amended Claim 1, such that there is a failure to anticipate Applicants' invention. Odorzynski relates to a disposable absorbent article that includes at least one elasticized area formed from an elastomeric, hot melt, pressure-sensitive adhesive that is used to bond a first and second component to one another. The reference, however, does not teach or suggest an article with an elastic component consisting of an ear or a side panel comprising an elastomeric composition applied either directly or indirectly via printing in a predetermined geometric pattern wherein the pattern

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is selected from the group consisting of rectilinear stripes, curvilinear stripes, triangles, trapezoids, squares, parallelograms, polygons, ellipses, circles and combinations thereof, and wherein the pattern comprises at least two differing elastomeric members that are non-parallel with respect to each other in the elastic component as is required by independent Claim 1. Since such is not taught or suggested by the reference, there can be no anticipation of the rejected claims by Odorzynski. Applicant therefore submits that the rejection of these claims is improper and it respectfully requests reconsideration and withdrawal of the rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Because Odorzynski fails to teach or disclose every element of independent claim 1, Applicants assert that independent claim 1 is in condition for allowance. Further, because claims 6, 9, 13, 15, and 22-27 depend directly or indirectly from Claim 1, they too are not anticipated by Odorzynski and therefore, are in condition for allowance.

Rejections Under 35 USC §103(a)

Over Odorzynski or Odorzynski in view of Himes

Claims 16, 22, 28 and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski. The Office has raised the following points with respect to Odorzynski's disclosures and the present invention:

- With respect to Claim 16: Odorzynski teaches selecting the viscosity of the adhesives that can involve mixing adhesives as well as heating them. Odorzynski does not explicitly teach two different adhesives, however Odorzynski does teach applying the adhesives either by spray coating or film forming (Cal. 6, lines 13-20) which would allow the application of different elastic adhesive compositions

to one substrate. Examiner asserts therefore that it would be obvious to modify the adhesive area taught by Odorzynski so as to be comprised of two different adhesive compositions applied in two different patterns.

- With respect to Claim 22: Odorzynski does not explicitly teach different elastic adhesives disposed on different components of diaper 10. However, since Odorzynski teaches various application methods for the elastic adhesive composition, various suitable materials for the composition itself, and teaches applying an adhesive to at least one component of diaper 10 (e.g. fastening tabs 40 to topsheet 14), it would be obvious to one of ordinary skill in the art to apply different adhesives in different patterns to different components of diaper 10, said differing adhesives exhibiting different elastic properties.
- With respect to Claim 29: Odorzynski teaches an elastomeric hot melt pressure sensitive adhesive, which includes polyurethane adhesives, adhesives set forth in applicant's disclosure.

In order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* Applicants respectfully traverse this rejection because the Office Action fails to establish a *prima facie* case of obviousness.

As detailed above, Odorzynski fails to teach or even suggest the requisite elements of the article of Claim 1. In particular, there is no teaching of an article with an elastic component consisting of an ear or a side panel comprising an elastomeric composition applied either directly or indirectly via printing in a predetermined geometric pattern wherein the pattern is selected from the group consisting of rectilinear stripes, curvilinear stripes, triangles, trapezoids, squares, parallelograms, polygons, ellipses, circles and combinations thereof, and wherein the pattern comprises at least two differing

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elastomeric members that are non-parallel with respect to each other in the elastic component as is required by independent Claim 1.

Because Odorzynski fails to teach or suggest all of the claim limitations of independent Claim 1, Applicants assert that independent claim 1 is in condition for allowance. Further, because claims 16, 22, 28 and 29 depend directly or indirectly from Claim 1, they too are nonobvious over the cited reference and are in condition for allowance.

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski in view of Himes (U.S. Patent No. 5,304,599). The Office states that “[w]ith respect to Claim 2: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric polymer and a tackifying resin having a percent set of 9%. (‘599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9%.”

Applicant traverses this rejection, for the same reasons detailed above. Himes does not remedy Odorzynski’s shortcoming detailed above. Rather, Himes focuses on a particular extrudable elastomeric composition that comprises an elastomeric polymer and a tackifying resin where the composition if formed into an elastic sheet having a stress relaxation of less than about 30 percent. Therefore, even application of Himes fails to yield a combination that amounts to a semblance of the stretch composite of Claim 1.

It is well settled that references relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of amended Claim 1, the Office Action has not established a *prima facie* case of obviousness and has not placed the presently claimed article in the possession of the public. Further, because Claim 2

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depends directly from Claim 1, it too is nonobvious over the cited reference and is in condition for allowance.

Conclusion

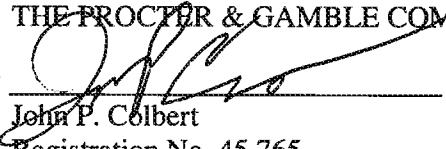
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §§'s 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 2, 6, 9, 13, 15, 16, 22-36 is respectfully requested.

Respectfully submitted,

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